Filed 9/14/12 In re R.I. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re R.I., a Person Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. J.R. et al., Defendants and Appellants.	E055461 (Super.Ct.No. SWJ1100162) OPINION

APPEAL from the Superior Court of Riverside County. Michael J. Rushton, Judge. Affirmed.

Leslie A. Barry, under appointment by the Court of Appeal, for Defendant and Appellant J.R.

William D. Caldwell and Richard D. Pfeiffer, under appointment by the Court of Appeal, for Defendant and Appellant D.I.

Pamela J. Walls, County Counsel, and Anna M. Deckert, Deputy County Counsel, for Plaintiff and Respondent.

Defendants and appellants J.R. (Mother) and D.I. (Father) appeal from orders denying Mother's petition under Welfare and Institutions Code[1] section 388 and terminating their parental rights to their 20-month-old daughter R.I.[2] Mother's sole contention on appeal is that the juvenile court erred in denying her section 388 petition. Father joins in Mother's argument. We reject Mother's contention and affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

Mother and Father resided in a home together in Riverside County with their infant daughter R.I., Mother's other two children, and Father's other two children. The children were all under the age of six. Mother explained that Father was the primary caretaker of the children while she worked as a surgical technician.

The family came to the attention of the Riverside County Department of Public Social Services (DPSS) on March 7, 2011, after Father took then three-month-old R.I. to her primary care physician. Upon examination, the doctor suspected R.I. sustained a clavicle fracture. The doctor had the baby transported to a hospital by ambulance. X-rays and testing eventually revealed R.I. had suffered a right clavicle fracture; partially

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] The child's half siblings are not subjects of this appeal.

healed fractures of the right anterior sixth and seventh ribs; multiple rib fractures; two skull fractures; fractures through the growth plates in her legs;[3] and multiple fractures to her hands, legs, and feet. In all, R.I. had sustained 28 broken bones. The doctor believed the injuries were consistent with child abuse, and occurred on at least two different occasions. R.I. had also tested positive for marijuana, and was diagnosed with failure to thrive.

During interviews, the parents reported that R.I. had a lump on her shoulder on Thursday, March 3, 2011; and that over the weekend, R.I. did not move her legs and they appeared to be stiff. Mother stated that R.I. was crying a great deal, did not want to be touched, and would not eat. She thought about taking R.I. to the doctor during the weekend, but did not do so because the doctor's office was not open; she did not think of taking R.I. to the emergency room, even though she is a surgical technician. The parents also noted that by March 6, 2011, R.I. was "lifeless" and not acting her happy self. Mother called the doctor's office the following day, March 7, and was "adamant" that the child be seen that day. The parents had "no idea how the child received" the injuries, but believed they may have been caused by R.I.'s two-year-old half sibling falling on top of R.I. The children reported that the two-year-old fell on top of R.I. while they were playing and dancing. The doctor informed the social worker that the doctor did not believe the broken bones could have resulted from a child falling on R.I. The ultimate

[3] Growth plates are areas of developing cartilage tissue near the ends of long bones in children and adolescents. (See Nat. Inst. of Arthritis & Musculoskeletal & Skin Diseases, Nat. Insts. of Health, Dept. of Health & Human Services http://www.niams.nih.gov/Health_Info/growth_plate_injuries/default.asp [as of Sept. 14, 2012].)

finding was that the broken bones resulted from more than one episode of nonaccidental abuse.

The children also reported domestic violence between the parents. They explained that they had witnessed Mother and Father yelling at each other, Father hitting Mother, and Mother breaking a door.

Additional history concerning the parents revealed that in November 2010, DPSS received a referral regarding allegations of general and sever neglect of R.I. after the infant tested positive for marijuana following her birth. In December 2010, the parents were counseled on their substance abuse by DPSS, and signed a "Safety Plan" that identified their substance abuse as a safety factor. The plan required them to refrain from using marijuana. The parents were also provided with substance abuse treatment referrals. However, the parents failed to comply with the plan and continued to abuse marijuana. The parents also had a history of engaging in domestic violence, and failing to restrain the children in their car seats. In addition, Father had left the two-year-old and R.I. in their four-year-old sibling's sole care. Furthermore, Mother had a history of domestic violence and a contentious relationship with the father of her two older children and had been arrested for spousal abuse.

Mother acknowledged regularly using marijuana since she was 14 years old, but argued that "the marijuana use ha[d] nothing to do with why her baby [was] in the hospital." Mother became very upset and accusatory of DPSS; and occasionally used profanity to state her anger with DPSS. While at the hospital, the social worker told Mother not to breastfeed R.I., since she had admitted using marijuana and was supplied

with formula. However, when the social worker and others left the room, Mother began to breastfeed the baby.

Father also acknowledged using marijuana, but claimed to do so for medicinal purposes. Father had been diagnosed with bipolar disorder, and had not taken medication to treat the disorder in years. Father also had a history of domestic violence involving the mother of his two older children.

On March 8, 2011, the children were taken into protective custody. On March 10, 2011, DPSS filed a petition on behalf of R.I. and her half siblings under section 300, subdivisions (a) (severe physical harm), (b) (failure to protect), (e) (severe physical abuse of a child under the age of five), (i) (cruelty), and (j) (abuse of sibling). The petition was amended on June 27, 2011. The children were formally removed from parental custody at the March 11, 2011, detention hearing. R.I. remained hospitalized, while her half siblings were placed in their father's home. The court ordered a psychological medication evaluation for Mother and hair follicle tests for the parents.

On March 24, 2011, R.I. was placed in a medically fragile certified foster home. By June 2011, R.I.'s fractures had healed and she was no longer considered medically fragile. Accordingly, R.I. was moved to another foster home. R.I. was exhibiting signs of being developmentally delayed, and was referred to Inland Regional Center.

Mother was provided referrals for a medication evaluation, counseling, parenting education, a substance abuse treatment program, and hair follicle drug testing. By April 5, 2011, Mother had not contacted the substance abuse treatment program, and it was reported that no application or intake appointment was scheduled for Mother.

On April 6, 2011, a contested jurisdictional/dispositional hearing was set. At that time, the court ordered DPSS to provide the parents with referrals within seven days.

On April 11, 2011, the social worker learned that Mother could not be referred for counseling services until she enrolled in a substance abuse treatment program and maintained sobriety for 30 days. The following day DPSS mailed Mother a letter referring her for a medication evaluation and a parenting education program. DPSS also informed Mother that she could not be referred to counseling services until she could show she had been sober for at least 30 days. On May 23, 2011, Mother was interviewed by the substance abuse program and completed a substance abuse screening. The results indicated that Mother did not meet the criteria for substance abuse "dependence." Mother was therefore not referred for any substance abuse treatment services or a prevention program.

On June 20, 2011, a referral was completed for an "on-demand drug test" for Mother. The social worker reported that a letter was to be "hand-delivered to [Mother] during her supervised visit with [R.I]. However, [Mother] did not show for her scheduled visit." The social worker also reported Mother had been "argumentative and accusatory with staff" and, although she had been provided with referrals, she failed to enroll in those services as of June 21, 2011.

On June 29, 2011, following a three-day jurisdictional/dispositional hearing, the juvenile court found the allegations in the petition true pursuant to section 300, subdivisions (b), (e), and (i). R.I. was declared a dependent of the court. Mother and

Father were denied reunification services pursuant to section 361.5, subdivision (b)(5),[4] based on the jurisdictional finding under section 300, subdivision (e), and a section 366.26 hearing was set. In addition, the court ordered DPSS to assess the maternal grandparents' home for placement of R.I. However, DPSS was concerned about R.I. being placed in the home of the maternal grandparents because they appeared to believe that neither parent harmed the child.

Nevertheless, on August 11, 2011, following a contested hearing, the juvenile court ordered R.I. placed in her maternal grandparents' home. DPSS complied with this order and, subsequently, placed R.I. with her maternal grandparents. R.I. was thriving in her maternal grandparents' home. The maternal grandparents were interested in adopting R.I., and were meeting R.I.'s psychological, physical, and emotional needs.

The parents continued to visit R.I., and the visits were appropriate. The social worker observed that both parents were affectionate with the child and appeared to care for her. However, due to the numerous fractures inflicted on R.I. and the lack of knowledge shown by both parents as to how they occurred, the social worker did not believe either parent was capable of ensuring R.I.'s safety.

On October 27, 2011, Mother filed a section 388 petition and supporting documentation, seeking reunification services and placement of the child in her care upon a home evaluation and verification of completed services. Mother claimed that she had

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[4] Section 361.5, subdivision (b)(5), provides that reunification services need not be provided to a parent when the child was brought within the jurisdiction of the court under subdivision (e) of section 300 (severe physical abuse) because of the conduct of the parent.

ended her relationship with Father and was residing on her own in San Diego County; and that she had "completed all programs that would have been required if she had been afforded services." Mother further asserted that she had maintained a bond with the child and could provide a safe and loving home. In support, Mother submitted a certificate of completion and two letters from "Major Changes," a treatment program. The letters were signed by Major Jack Warford, the program administrator. She also provided a letter from the mental health department noting that Mother had completed seven hours of substance abuse education.

The social worker recommended that parental rights be terminated; that Mother's section 388 petition be denied; and that the juvenile court approve the permanent plan of adoption. The social worker noted that the programs Mother claimed to have completed could not be verified. Major Warford at "Major Changes" was unable to provide the social worker with information about the treatment program. In addition, he admitted that one of the letters (regarding domestic violence) described a treatment that did not apply to Mother because she had never taken any domestic violence programs with him. Also, Major Warford was unable to provide any certification as to his qualifications to administer any treatment programs and claimed that his "pastor" status exempted him from being licensed or certified.

Meanwhile, by December 2011, R.I. was continuing to thrive in her maternal grandparents' home. She was happy; she was provided with the necessary medical treatment and nourishment she required; and she was bonding to her caregivers.

A combined hearing under sections 388 and 366.26 was held on December 14, 2011. At that time, the juvenile court stated that there was a felony arrest warrant for Mother and Father related to child abuse charges filed by the Riverside County District Attorney's Office pursuant to Penal Code section 273, subdivision (a). The court further noted that the deputy sheriff intended to place Mother in custody pursuant to the felony warrant.[5] Mother's counsel was "taken aback with the warrant," and after speaking with Mother, Mother did not testify. Instead, Mother offered stipulated testimony that she had completed a 10-week parenting program, had participated in counseling, and had provided results of a clean hair follicle drug test. Mother also offered the testimony of an assistant with DPSS who monitors visits. The assistant testified that Mother regularly and consistently visited R.I. every other week for two hours; that the visits were appropriate; that R.I. appeared comfortable with Mother; that there were no concerns for R.I.'s safety; and that Mother handled R.I. in a gentle manner. The assistant further stated that once visits ended R.I. would "walk up to grandma with her arms up." Mother also offered exhibits into evidence, of which all but the October 23, 2011, letter from Major Warford noting that he found no indication Mother was negligent, were admitted into evidence.

Following argument from counsel, the juvenile court denied the section 388 petition, noting that Mother was "trying to work in a positive direction" and that her circumstances were changing, but that they had not changed. The court further found that

[5] Father was not present at the hearing.

it would not be in the child's best interest to grant the section 388 petition taking into account all of the factors outlined in *In re Kimberly F.* (1997) 56 Cal.App.4th 519 (*Kimberly F.*). The juvenile court subsequently concluded that no exceptions to adoption applied, found the child to be adoptable and terminated parental rights.

II

DISCUSSION

Mother contends that the juvenile court erred in denying her section 388 petition. Specifically, she contends that she made substantial progress toward eliminating the problems that led to the child's removal by (1) separating from Father and living apart from him and (2) by participating in all services that would have been ordered. She further claims that pursuant to the applicable standards set forth in *Kimberly F.*, *supra*, 56 Cal.App.4th 519, it was in the child's best interest to grant the petition. Father joins in Mother's arguments.

A parent seeking to change an order of the dependency court bears the burden of proving by a preponderance of the evidence that (1) there is a change in circumstances warranting a change in the order, and (2) the change would be in the best interest of the child. (*In re S.J.* (2008) 167 Cal.App.4th 953, 959 [Fourth Dist., Div. Two].) "Not every change in circumstance can justify modification of a prior order. [Citation.] The change in circumstances must relate to the purpose of the order and be such that the modification of the prior order is appropriate. [Citations.] In other words, the problem that initially brought the child within the dependency system must be removed or ameliorated. [Citations.] The change in circumstances or new evidence must be of such significant

nature that it requires a setting aside or modification of the challenged order. [Citations.]" (*In re A.A.* (2012) 203 Cal.App.4th 597, 612 [Fourth Dist., Div. Two, Ramirez, P.J.] (*A.A.*).)

The denial of a section 388 petition is reviewed for abuse of discretion. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 460-461.) The trial court's ruling will not be disturbed on appeal unless the trial court has exceeded the limits of discretion by making an arbitrary, capricious, or patently absurd determination, i.e., the decision exceeds the bounds of reason. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319 (*Stephanie M.*).) "It is rare that the denial of a section 388 motion merits reversal as an abuse of discretion . . . ." (*Kimberly F.*, *supra*, 56 Cal.App.4th at p. 522.) Having reviewed the record as summarized above, we conclude the juvenile court properly exercised its discretion by denying Mother's section 388 petition.

1. Changed Circumstances

The procedure under section 388 accommodates the possibility that circumstances may change so as to justify a change in a prior order. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) Mother sought to set aside the juvenile court's prior order denying her reunification services. Of course, a change of circumstance or new evidence that would justify granting her services must address the basis for the juvenile court's original order. (*A.A.*, *supra*, 203 Cal.App.4th at p. 612.) The juvenile court denied Mother services pursuant to section 361.5, subdivision (b)(5).

At the age of three months, R.I. was detained from parental custody, and at the age of seven months, she was declared a dependent under section 300, subdivision (e), because she had 28 unexplained, nonaccidental fractures. When a child under the age of five has suffered severe physical abuse as described in section 300, subdivision (e), because of the parent's conduct, the juvenile court generally denies services. (§ 361.5, subd. (b)(5); *Raymond C. v. Superior Court* (1997) 55 Cal.App.4th 159, 164.) In such cases, the court can order services only if the court finds services are likely to prevent future abuse or denial of services would be detrimental to the child. (§ 361.5, subd. (c).)

The difficulty faced by Mother in making her case in the juvenile court or on appeal is that neither she nor Father reveal "the problem that initially brought the child within the dependency system" so that the juvenile court could determine whether the problem was "removed or ameliorated" by the changes in circumstances advanced in Mother's section 388 petition. (*A.A.*, *supra*, 203 Cal.App.4th at p. 612.) On an unhelpful and abstract level, one may say that the problem was the broken bones, which have healed. But without knowing the cause of how the bones were broken, neither the juvenile court nor we can determine whether circumstances have changed so as to make it likely that R.I. will not have her bones broken again.

Nevertheless, Mother offers as a changed circumstance that she has terminated her relationship with Father. But, Father has not admitted causing the abuse, and Mother has not accused him of causing the abuse. Even in her opening brief, the most she can say is that "it seems most likely that Father was the perpetrator . . . ." However, that is not an inference that the juvenile court was compelled to make.

Some of the fractures were of different stages of healing than others, from which the juvenile court could reasonably infer that multiple incidents of abuse occurred, spread across periods of days or weeks. The juvenile court could reasonably determine that it could not neglect the possibility that Mother caused (alone or in concert with Father or by failure to rescue or restrain) some or all of R.I.'s 28 nonaccidental fractures, especially in light of her arrest warrant for child abuse charges. Therefore, since Mother and Father could not or would not explain what really caused the fractures, which are consistent with being hit or shaken or dropped, Mother cannot show any change in the circumstances resulting in her loss of custody of R.I. Under the circumstances, the juvenile court could reasonably infer that Mother would fail to prevent future abuse of R.I.

Furthermore, the juvenile court could reasonably find that, even if Mother did not directly cause the broken bones, she failed to observe R.I.'s pain or discomfort in having two broken ribs, before she noticed the lump on R.I.'s shoulder. In addition, the juvenile court could reasonably consider Mother's failure to take immediate action that Thursday night or the next day, given the likely symptoms and behavioral evidences of a three-month-old baby having suffered a broken clavicle, as well as the other broken bones subsequently discovered upon further testing. From these overt omissions, the juvenile court could reasonably infer Mother's complicity in the severe physical abuse of R.I. Thus, it could reasonably appear to the juvenile court that a preponderance of the evidence (1) did not show that Father was the perpetrator, and (2) did not exonerate Mother either as the principal or coperpetrator of the severe physical abuse of R.I. Therefore, the juvenile court did not abuse its discretion in impliedly rejecting Mother's

termination of her relationship with Father as a change in the circumstances that resulted in R.I.'s broken bones.

Similarly, the juvenile court need not have been impressed with Mother's clean hair follicle test[6] or participation in a substance abuse *educational class* because Mother never connected her substance abuse to R.I.'s broken bones. The same may be said of Mother taking parenting classes, receiving individual counseling, or participating in a domestic violence program—no proven causal connection to R.I.'s broken bones. By the same reasoning, the juvenile court could reasonably find that receiving reunification services such as parenting training, drug abuse prevention, individual counseling, or anger management would *not* reduce the likelihood of more broken bones. Therefore, the juvenile court could reasonably find that Mother had not proven by a preponderance of the evidence that any of the occurrences advanced by Mother qualified as changed circumstances. Thus, by failing to be honest about the cause of R.I.'s broken bones, Mother has lost the chance to show that she has changed the circumstances that resulted in the loss of custody of R.I.

Additionally, the juvenile court could find the services or activities Mother did engage in to be not particularly compelling. Although she said that she had terminated her relationship with Father, at the time of the section 388 hearing, Mother did not offer

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[6] The result of the clean hair follicle drug test that was admitted into evidence was collected on November 22, 2011, about three weeks prior to the section 388 hearing. The record is unclear as to how long Mother had maintained her sobriety. The juvenile court noted, "Well, I have a clean hair follicle which indicates that mother has a period of time where she has not been involved using controlled substances."

any testimony concerning her present relationship with Father. Furthermore, Mother had a serious addiction to marijuana; yet, she failed to attend a substance abuse *treatment* program. She also failed to address her domestic violence issues by attending an anger management program; instead, she only addressed domestic violence as one of the issues in her individual therapy with an unlicensed pastor. Indeed, Mother did not make any showing as to what she had learned or how she had actually benefitted from the programs in which she participated. [7]

In her reply brief, Mother asserts "the question should not be whether Mother participated in counseling with a licensed family therapist," but whether she participated in and benefited from counseling. Mother then concludes, without offering any supporting evidence, the answer is "yes." However, there was no evidence presented at the section 388 hearing as to whether Mother had benefitted from the counseling sessions with Major Warford to prevent future abuse. She had merely offered stipulated testimony that she had participated in counseling.

Mother also argues that she had "proved" she had obtained and could maintain sobriety from marijuana regardless of whether she had completed an "actual substance abuse treatment program." However, Mother had only shown that she could maintain sobriety for a *brief* period of time. We reject Mother's arguments to the contrary at oral

[7] Although Mother could have explained how the services she had participated in would prevent future abuse of R.I., Mother's trial counsel informed the court that Mother would not be testifying because of the pending criminal charge.

argument, as well as counsel's assertion that the analysis in this opinion prevents a parent from ever showing changed circumstances.

Thus, because Mother has never revealed the circumstances resulting in R.I.'s 28 nonaccidental bone fractures, nor established how she benefitted from the efforts she made, the juvenile court did not abuse its discretion in finding that Mother had not proved by a preponderance of the evidence that her recent efforts at rehabilitation were changed circumstances warranting a modification of the court's denial of reunification services order. (See *In re Marilyn H., supra*, 5 Cal.4th at p. 309 [burden on parent to show changed circumstances].)

2. Best Interest of the Child

Even assuming arguendo that Mother showed changed circumstances, she did not establish that offering reunification services would be in the child's best interest.

Parent and child share a fundamental interest in reuniting up to the point at which reunification efforts cease. (*In re R.H.* (2009) 170 Cal.App.4th 678, 697.) By the time of the section 366.26 hearing, the primary consideration in determining the child's best interest is assuring stability and continuity. (*Stephanie M., supra*, 7 Cal.4th at p. 317; see also *In re Amber M.* (2002) 103 Cal.App.4th 681, 685 [citing *Stephanie M.*, the appellate court reasoned that after services are terminated, the focus shifts to the child's need for permanency and stability].) "[I]n fact, there is a rebuttable presumption that continued foster care is in the best interest of the child. [Citation.]" (*Stephanie M.*, at p. 317.) Accordingly, "[a]t this point in the proceedings, on the eve of the selection and implementation hearing, the children's interest in stability was the court's foremost

concern, outweighing any interest mother may have in reunification." (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 251-252.) We review the lower court's denial of a section 388 petition for abuse of discretion. (*Ibid.*)

On this record, Mother did not establish that the child's need for stability and continuity would be advanced by reunification efforts. The past conduct of Mother indicated that there was no guarantee that Mother would successfully complete family reunification services if they were offered or that she could adequately protect the child. In fact, by the time of the section 366.26 hearing, Mother still had not participated in a domestic violence program, an anger management program, a substance abuse treatment program, or therapy with a licensed therapist. Moreover, Mother has never explained the cause of R.I.'s injuries. And, she waited several days to call a doctor, knowing the infant child was crying a great deal and not eating, presumably due to the pain. In fact, Mother did not even take the child to see a doctor; she had Father take the child. R.I. had 28 nonaccidental fractures when she was removed from her parents' custody. The injuries could have been caused by Mother or Father or both parents. Significantly, R.I. had not received any new fractures since being removed from her parents' custody, and she was thriving in her maternal grandparents' home.

A permanent plan that offered stability was in the child's best interest at this stage of the proceedings. The placement is stable and positive for R.I., and R.I. is adoptable. The opportunity for R.I. to have a permanent adoptive home could be lost as time passed while Mother was given further opportunity to demonstrate the ability to provide a permanent, safe, and stable home for the child. It is not in R.I.'s best interest for

permanence to be delayed for an unknown or indefinite period of time, with no certainty or even likelihood Mother could progress to the point of obtaining custody of the child. The juvenile court therefore did not abuse its discretion in determining that it was not in the child's best interest to grant Mother's section 388 petition.

In arguing that the requested change in this case is in R.I.'s best interest, Mother focuses on the three factors set out in *Kimberly F.*, *supra*, 56 Cal.App.4th 519. The *Kimberly F.* court, after rejecting the juvenile court's comparison of the biological parent's household with that of the adoptive parents as the test for determining the child's best interest, identified three factors, not meant to be exclusive, that juvenile courts should consider in assessing the issue of the child's best interest: (1) the seriousness of the problem that led to dependency and the reason the problem had not been resolved by the time of the final review; (2) the strength of the relative bonds between the child to *both* the child's parent and the child's caretakers and the length of time the child has been in the dependency system in relation to the parental bond; and (3) the degree to which the problem that led to the dependency may be easily removed or ameliorated, and the degree to which it actually has been. (*Id*. at pp. 530-532.)

These factors, however, focus primarily on the parent and fail to take into account our Supreme Court's emphasis on the child's best interest once reunification efforts have failed. (*Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) "[A] primary consideration in determining the child's best interest is the goal of assuring stability and continuity." (*Ibid*.) "'When custody continues over a significant period, the child's need for continuity and stability assumes an increasingly important role.'" (*Ibid*.) Thus, we

consider the *Kimberly F.* factors only as they *aid in determining how best to achieve continuity and stability*.

Mother acknowledges that R.I. had a bond with her grandparents, and that she understood the seriousness of the problems that led to R.I.'s removal, but claims that she was "demonstrating a commitment to addressing them." She further states that she had "ameliorated her substance abuse problem" "in a short period of time" and had "presented proof" that the other "problems could be ameliorated in a timely fashion." However, as previously stated, *infra*, Mother still had not addressed or ameliorated many of the problems that may have led to the child's removal. And, as noted by the juvenile court, based on Mother's history with the father of her older children and unhealthy relationships, "a few meetings with Major Jack Warford" are not going to result in ameliorating the problems that may have led to the child's removal. In addition, she has never addressed the problem of how R.I. sustained her injuries. Mother appears to downplay her domestic violence problems by arguing "the domestic violence issues were really secondary issues" and would be addressed in her "ongoing treatment." However, there was little evidence presented that Mother had attempted to address her domestic violence issues. Thus, the juvenile court did not abuse its discretion in finding that the best interest of the child would not be served by providing Mother with reunification services.

In sum, granting Mother reunification services in the hopes the child could safely be returned to her care at some future point would mean delaying the permanent plan of adoption and would be contrary to the child's best interest. (*In re Casey D.* (1999) 70

Cal.App.4th 38, 47.) As much as Mother was to be commended for her efforts to become an effective parent and resolve her drug addiction, the fact remained that the child could not safely be maintained in Mother's home. Therefore, pursuant to *Stephanie M.*, *supra*, 7 Cal.4th at page 317, the juvenile court did not abuse its discretion by denying Mother's section 388 petition.

III

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

RICHLI
J.

CODRINGTON
J.